No. 56970-1-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION TWO

In re Dependency of

C.M., a minor child.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

MOTION FOR ACCELERATED REVIEW AND BRIEF OF THE APPELLANT

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A. INTRODUCTION

The Department separated Mr. H. from his baby before they had a chance to be a family. He mourned their separation: "I haven't been offered a chance to father her myself."

The court found his daughter dependent based on Mr. H.'s status as a new parent and his lack of stable housing. But these conditions do not establish that Mr. H. is not capable of caring for his daughter, nor is there any evidence those conditions put C.M. in danger. The Department also made no effort to prevent out-of-home placement. The dependency and disposition order must be reversed.

In addition, the Juvenile Court Act mandates the family unit must be nurtured. To this end, this Court should hold the Department is required to provide reasonable efforts prior to entry of a dependency order. Because the Department made no effort to support the family prior to seeking a dependency, reversal is required.

B. ASSIGNMENTS OF ERROR

1. The court's finding of fact 2.3, that C.M. dependent is dependent, lacks substantial evidence.

2. Finding of fact 2.2, that the Department proved C.M. was dependent by a preponderance of the evidence, lacks substantial evidence.

3. Finding of fact 2.2.P, that Mr. H. cannot fulfill his parental obligations, lacks substantial evidence.

4. Finding of fact 2.2.W, that placing C.M. with Mr. H. would place her at risk of harm, lacks substantial evidence.

5. Finding of fact 2.5, that the Department provided reasonable efforts to justify out-of-home placement, lacks substantial evidence.

6. The Department failed to prove it provided reasonable efforts to support the family prior during shelter care and prior to entry of a dependency order.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Department bears the burden to prove a child is dependent. A child may be dependent if a parent is not capable of adequately caring for their child and that this incapability creates a danger of substantial damage to the child. The court's finding that a child is dependent must be supported by substantial evidence. Did the Department fail its burden when it presented no evidence Mr. H. has a parental deficiency that places C.M. in danger?

2. The court must let a dependent child live at home with their parents unless the Department proves it made reasonable efforts to prevent or eliminate the need to remove the child. This requires evidence the Department provided specific services to prevent or eliminate the need for removal and that those services failed to prevent the need for removal. Did the Department fail its statutory duty when it made no effort to allow C.M. to live with her father?

3. The Washington Legislature has declared "the family unit is a fundamental resource of American life which should be nurtured." In order to carry out this purpose, must the Department provide reasonable efforts to support the family at all stages, including the dependency fact finding? Did the Department fail its responsibility here when it made no effort to preserve the family prior?

D. STATEMENT OF THE CASE

1. Mr. H. contacts the Department to express his desire to parent as soon as he learns C.M. might be his child.

In November 2020, Ms. M. gave birth to a healthy baby girl, C.M. CP 245. Unfortunately, because Ms. M. was homeless and some of her behavior concerned hospital staff, the Department immediately intervened. CP 247-48. Just days after C.M. was born, the Department took her and placed her in foster care.[1] CP 9-10.

[1] In February 2021, Ms. M. agreed to a dependency. CP 76-77.

In February 2021, Mr. H. learned he might be C.M.'s father. CP 89. He contacted the Department to ask that C.M. live with him and request a paternity test. RP[2] 17; CP 89, 248. He repeated his request for a paternity test the next day when he spoke to a Department social worker. CP 247.

2. *The Department allows Mr. H. to meet C.M. once, then refuses to allow visits or provide services until he proves he is C.M.'s father by genetic testing.*

In March 2021, the Department allowed Mr. H. to meet C.M. for the first time. CP 202. Their first meeting occurred in the Department's office in Tacoma. RP 50. Mr. H. lived in his car in King County, and he traveled to Pierce County for the visit. RP 9; CP 249.

Mr. H. was nervous during this first meeting, and he acknowledged he had little experience caring for a baby. RP 45. At first, he did not know how to change or feed C.M., but, with

[2] The transcripts in this case consist of two separately paginated volumes. This brief references the 287-page volume containing the dependency trial dates prepared by Melissa Firth at Three Rivers Transcripts.

some direction, he held his daughter and changed her diaper. RP 52-53. He wanted C.M. to live with him, and he expressed his willingness to learn how to care for C.M. RP 18, 24, 45.

Several Department employees supervised this first visit and, at times, there were three people in the room watching Mr. H. interact with his daughter for the first time. RP 50. At one point, someone interrupted the visit to give Mr. H. court documents. RP 68. The Department social workers discussed the pending court case with Mr. H. and questioned him while he tried to spend time with his daughter. RP 71, 72. Mr. H. told them he did not want to talk about legal issues or his past while he was meeting his daughter for the first time. RP 88.

After this visit, the Department refused to allow Mr. H. any more visits and refused to offer any services, stating it would only do so after paternity was established. RP 66, 71. The Department did not reach out to Mr. H. in any way for several months. RP 77.

3. *Months later, the Department orders a paternity test, confirms Mr. H. is C.M.'s father, and allows Mr. H. to join Ms. M.'s visit with C.M.*

The Department did not arrange for a paternity test until several months later. CP 180. Mr. H. completed it immediately. RP 38. He "couldn't wait" to get the paternity results and get involved in C.M.'s life. RP 16.

In July 2021, the test results confirmed Mr. H. was C.M.'s father, and the Department allowed him to visit his daughter again. CP 179-82; RP 55. Four months had passed since Mr. H. was first allowed to visit C.M., who was now about eight months old. Instead of arranging a separate visit for Mr. H., the Department made him join Ms. M.'s visit. RP 55.

Mr. H. was looking forward to seeing his daughter again. RP 75. He recognized he was a new parent, but he wanted C.M. to live with him. RP 45, 249, 251. Even though the Department knew he was a new parent and observed his newness during the first visit in March, it did not offer him any parenting instruction or classes prior to the July visit. RP 95.

Similar to the March visit, the July visit also took place in the Department's office in Tacoma with multiple people in the room to observe both Mr. H. and Ms. M. RP 55. Mr. H. was nervous and needed some guidance, but he was eager to care for C.M. RP 92, 94. He held C.M. and fed her. RP 57. Even though Mr. H. did not have as much time to interact with C.M. because Ms. M. breastfed her for much of the visit, Mr. H. was engaged and observant. RP 76-77, 140-41. He enjoyed watching C.M. and "seemed to be really happy." RP 149, 140.

4. Mr. H. asks the Department for changes in the visit location and setting to better help him and C.M. develop their relationship, and the Department ignores his request.

Mr. H. recognized the importance of establishing a relationship with his daughter; however, he felt that supervised visits in the Department's office made this difficult. RP 18. At both visits, there were multiple people present and C.M. was "passed around by several people." RP 24. Because of the setting and number of people involved, he felt the visits were "confusing" for his daughter: "I don't want [C.M.] to feel like

she's going to a doctor's visit every time she sees me."[3] RP 38, 30, 31, 40-41. He also felt "uncomfortable" in the Department's office with everyone watching him, saying, "I just feel like I am being scrutinized." RP 41, 43. As opposed to a room in a State agency building with multiple Department employees observing them, he felt a more "natural," unsupervised setting would be more comfortable and conducive to bonding for him and C.M. RP 38.

Sharing a visit with Ms. M. also made it more difficult for Mr. H. to bond with his daughter. Even though Mr. H. and Ms. M. were not together, they were willing to maintain a positive relationship for C.M.'s sake. RP 40. But visiting together meant they had to share their time with C.M. Not only did Ms. M. have prior experience taking care of babies, she was

[3] Mr. H. was also required to wear a mask in the Department's office, which made it even harder to bond with C.M. because she could not see his face. RP 43. He said he would prefer to do regular COVID-19 testing or wear a clear mask so his daughter could see his face. RP 43.

allowed to regularly visit C.M. since she was born, so she was understandably more comfortable caring for C.M. during visits. RP 76. When Ms. M. would breastfeed C.M., Mr. H. would sit and patiently wait for his turn to interact with C.M. RP 76.

In addition, because he lived in King County and had limited resources, traveling to Pierce County for visits was difficult for Mr. H.: "the travel and the distance[have] been a huge burden on me and my resources." RP 17. After his March visit, he requested the Department arrange visits closer to King County and schedule them later in the day to accommodate his work schedule. RP 17, 79. Nobody followed up with him about his request, and the Department continued to arrange visits in Pierce County. RP 18, 55.

5. *Mr. H. requests financial and housing assistance so that he can parent C.M., but the Department makes minimal contact with him before filing a dependency petition.*

The Department knew Mr. H. lived in his car. RP 202. Mr. H. knew housing was important for C.M. to live with him, so he asked the Department for help. RP 27, 139. Department

social worker Tatum Salas emailed him a list of housing resources in September 2021 but did not follow up. RP 139. The Department declined to refer Mr. H. for a housing voucher, and it did nothing else to help him obtain stable housing. RP 161, 153, 28.

Nobody talked with Mr. H. about any other resources to help him take care of his daughter. Nobody talked with him about financial assistance or daycare subsidies. RP 37, 156. Because the Department offered no help, Mr. H. reached out to the Office of Public Defense (OPD) to get financial and housing assistance. RP 28-29, 248. A consultant with OPD helped him apply for financial aid and housing where C.M. could live with him. RP 248-29.

The Department had minimal engagement with Mr. H. and did nothing to help Mr. H. become able to take his daughter home. The Department social workers only spoke with Mr. H. during visits. RP 61. Department social worker Zea Mendoza did not offer any services or reach out to Mr. H. after visits. RP

77. And when Ms. Salas took over the case from Ms. Mendoza in July 2021, she reviewed the case file only to the extent necessary to provide services and visits for Ms. M., not Mr. H. RP 132-33.

Mr. H. wanted to be involved in C.M.'s care, but the Department did not include him. The Department did not keep him informed on how C.M. was doing; he did not know who to communicate with or how to get that information. RP 19-20. Instead, he got updates about his daughter from Ms. M. RP 36.

In September 2021, after only two visits and no other engagement with Mr. H., the Department filed a dependency petition as to Mr. H. CP 245-50.

6. *The court recognizes the Department did little to help Mr. H. but finds C.M. dependent because he is a new parent.*

The case proceeded to trial.[4] A Department social worker and the GAL testified that, based on their observations, Mr. H.

[4] Three Department social workers testified at Mr. H.'s dependency trial: Lisa Caudle, who filed the dependency petitions, Zea Mendoza, who was assigned to the case

was a new parent who had a lot to learn, but with the right support he could learn the skills he needed to care for C.M. Ms. Mendoza recognized Mr. H. "has never parented a child before . . . [and] he doesn't know how," but, with "support," he could learn to care for a baby. RP 59, 94. The GAL agreed: "I think [Mr. H.] absolutely could learn whatever he needs to learn to, you know, take care of a child." RP 173.

The GAL testified that Mr. H. would have benefited from services to help him develop his parenting skills and help him and C.M. build their relationship: "I really wish that we could get, you know, some support, some parenting classes and services there, so that bond could be built and enhanced." RP 175. She thought Mr. H.'s behavior during his first few visits was understandable for a first-time parent: "I think, especially

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beginning in December 2020, and Tatum Salas, who took over the case from Ms. Mendoza in July 2021. The Guardian ad Litem (GAL), Kris Freeman, also testified.

for someone who maybe isn't familiar with children, it's understandable to sit and observe." RP 175.

The GAL commented on the visitation setting, and she testified it is not possible to assess whether someone can safely parent based on one short visit with multiple people in the room. RP 173. She wished Mr. H. and C.M. had the opportunity to interact "without other people there. Without, you know, three other social workers." RP 176. In addition, Ms. Salas testified she was unable to assess Mr. H.'s ability to care for his daughter because Ms. M. was also at the July visit. RP 155.

The GAL also testified it is not appropriate to give a parent legal documents and talk about a legal case during a visit, especially during a first visit. RP 174. She said, "I can completely understand why [Mr. H.] may have appeared nervous" during visits. RP 171.

The GAL also discussed the importance of providing visits as soon as possible to allow the parent and child to build a strong bond. RP 174. She pointed out that the Department

allows many parents to visit their children even before genetic testing is complete, but the Department denied Mr. H. visits for months. RP 174. Ms. Mendoza testified she refused to provide Mr. H. with visits until paternity was established without any further explanation. RP 72. She admitted the initial March visit, which was prior to the paternity test, was arranged by another Department social worker. RP 66.

Aside from his lack of experience as a parent, there were no concerns as to Mr. H.'s ability to parent. RP 92, 176.

During trial, Mr. H. visited C.M. two more times. RP 238, 249, 250. They read and played together, and he fed her and changed her diaper. RP 249-50. He was engaged, and C.M. was happy. RP 241. The Department commented that Mr. H.'s marked improvement in his ability to parent was "a step in the right direction." RP 244, 241.

Mr. H. testified and lamented his separation from his daughter: "I haven't been offered a chance to father her myself." RP 24-25. If given the opportunity, he testified he

would do all that he could to give C.M. a safe home: he would go to a family shelter or move back to Texas to be with his family, RP 27, 28, and he would seek different employment. RP 31. He explained his lack of stable housing was a barrier to full-time employment. RP 31.

The court was "encouraged" by Mr. H.'s efforts to be involved in C.M.'s life, but nonetheless found C.M. dependent. RP 263, 262. It stated, "this case comes down to lack of a bond and lack of parenting skills." RP 261. It said Mr. H. had demonstrated that, "he could, with training, be a good parent" and that "[Mr. H.] is a person who just needs some parent coaching." RP 263, 262. "I think that engaging him in a parenting skills training program or having a coach would be a great idea." RP 263.

The court also addressed Mr. H.'s need for housing and financial assistance, and said the Department "needs to step up." RP 263. It directed the parties to arrange "a planning

meeting to figure out what exactly Mr. Harrison needs." RP 263-64.

E. ARGUMENT

1. The court's finding that C.M. is a dependent child is not supported by substantial evidence

In order to prove a child is dependent, the Department bears the burden to prove by a preponderance of the evidence that the child has "no parent . . . capable of adequately caring" for them and the child is therefore "in danger of substantial damage to [her] psychological or physical development." RCW 13.34.110(1); RCW 13.34.030(6)(c). There must be clear reasons to justify the Department's intrusion into the family. RCW 13.34.110(1).

On appeal, this Court reviews a dependency finding for substantial evidence. *In re Dependency of M.S.D.*, 144 Wn. App. 468, 478, 182 P.3d 978 (2008). Substantial evidence exists if, when viewing the evidence in the light most favorable to the prevailing party, "a rational trier of fact could find the fact more likely than not to be true." *Id.*

The court found "Mr. [H.] cannot currently fulfill his parental obligations for [C.M.] given his lack of stable and suitable housing and demonstrated parenting skills." RP 367 (FF 2.2.P). This does not establish that Mr. H. is currently "[in]capable of adequately caring" for C.M. RCW 13.34.030(6)(c). Nor did the court find that allowing Mr. H. to parent C.M. exposes her to any specific danger. Even if the court made such a finding, it is not supported by substantial evidence. Therefore, this Court must reverse.

a. The Department presented no evidence that Mr. H.'s status as a new parent makes him incapable of caring for C.M. or that it places C.M. in danger.

Mr. H. is a new parent. Like all new parents, he does not know everything about how to be a parent. This status does not establish that he is not "capable of adequately caring" for his daughter. RCW 13.34.030(6)(c). Most new parents are "untrained" at first, and part of a parent's liberty interest is the freedom to enter parenthood without State interference. *In re Custody of A.L.D.*, 191 Wn. App. 474, 496, 363 P.3d 604

(2015). If Mr. H.'s lack of parenting experience could justify a dependency, then every new parent would be inadequate and every child born to a first-time parent would be dependent.

The Department did not prove that Mr. H.'s status as a new parent made him incapable of parenting his daughter. Rather, the record shows the opposite: Mr. H. is a loving parent who is eager to learn parenting skills. Even though he was nervous during the first visit, he listened to direction, learned quickly, and was excited to return. It was understandable for him to defer to Ms. M. during their shared visit, as Ms. M. is a more experienced parent and had been permitted to visit with C.M. consistently since she was born.

Mr. H.'s ability to learn and parent his daughter shines through in his expanded knowledge, skills, and confidence after just two visits. While he needed prompting and assistance during his first visit, by the third he demonstrated he was capable of caring for C.M. RP 249-50. Mr. H. attended to C.M.'s needs. He soothed her, fed her, and changed her diaper.

RP 249-50. They played and laughed. RP 249. These facts are beyond dispute, and the court recognized this marked improvement, finding Mr. H. "enjoyed and participated in the visits and performing parental functions." CP 367 (FF 2.2.N).

Mr. H. knew he had a lot to learn, and he demonstrated his eagerness and ability to care for C.M. after just a few visits. The Department social workers and the GAL also recognized Mr. H.'s desire to learn so he can parent his daughter. RP 59, 94, 173. The GAL acknowledged one short visit is not enough to determine whether Mr. H. was capable of parenting his daughter. RP 173. The evidence does not prove Mr. H. is not capable of parenting C.M.

Nor did the court find Mr. H.'s status as a new parent constitutes a danger of substantial damage. *See* CP 367 (FF 2.2.W). Even viewed in the light most favorable to the Department, the evidence does not permit an inference that Mr. H.'s status as a new parent put C.M. in danger of substantial damage. *M.S.D.*, 144 Wn. App. at 478. Instead, it showed the

opposite: Mr. H. is a caring parent who is devoted to learning the skills necessary to parent his daughter. The Department failed its burden to prove Mr. H.'s status as a new parent makes his daughter a dependent child.

b. The Department presented no evidence that Mr. H.'s lack of stable housing makes him incapable of caring for C.M. or that it places C.M. in danger.

The Department was aware Mr. H. was living in his car from the moment he contacted the Department. CP 247. Mr. H.'s lack of stable housing does not make him unable to parent. *See In re Warren*, 40 Wn.2d 342, 345, 243 P.2d 632 (1952) ("Poverty of a parent does not of itself make the children dependent" unless it constitutes a danger to the children.); *In re Dependency of G.L.L.*, 20 Wn. App. 2d 425, 433, 499 P.3d 984 (2021) (emphasizing Department's duty to provide housing services where "[l]ack of safe and stable housing . . . precluded reunification"); *see also* RCW 26.44.020(19) (that a family is "experiencing homelessness" does not constitute negligent treatment or maltreatment).

Mr. H. lived in his car. But it does not mean he was incapable of parenting. And even though his lack of stable housing impacted other areas of his life, it does not make him an inadequate parent. That Mr. H. was unable to attend some visits—likely due to his lack of resources or his work schedule—also does not support a dependency finding. *See In re Welfare of X.T.*, 174 Wn. App. 733, 739, 300 P.3d 824 (2013) (that the father missed visits and declined urinalysis testing does not support dependency finding). The court's finding that Mr. H.'s "lack of stable and suitable housing" supports dependency lacks substantial evidence.

Nor did the court find Mr. H.'s lack of stable housing constitutes a danger of substantial damage. *See* CP 367 (FF 2.2.W). Even if the court made this finding, the Department did not prove that Mr. H.'s lack of stable housing placed C.M. in danger. In fact, the Department took the opposite position: the social worker testified that Mr. H.'s lack of stable housing is not a parental deficiency. RP 143-44. The court's own oral

ruling also undercuts this finding. *See* RP 262 (the court states that Mr. H.'s housing was immaterial). The Department failed its burden to prove Mr. H.'s lack of stable housing makes his daughter a dependent child, and the court's findings are not supported by substantial evidence. This Court should reverse.

2. The court's finding that the Department provided reasonable efforts prior to ordering out-of-home placement at disposition is not supported by substantial evidence.

After the court concludes a child is dependent, it is required to hold a disposition hearing immediately or within fourteen days. RCW 13.34.110(4). At the disposition hearing, the court orders services and determines the child's placement. RCW 13.34.130. Consistent with the Juvenile Court Act's mandate to preserve the family unit, the court must presumptively allow the child to live at home with her family. *Id.*; *In re Dependency of K.W.*, 199 Wn.2d 131, 151, 504 P.3d 207 (2022) (citing RCW 13.34.020).

In order to justify out-of-home placement of a dependent child, the Department must make reasonable efforts "to prevent

or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home." RCW 13.34.130(6). The Department must "specify[] the services, including housing assistance, that have been provided to the child and the child's parent." *Id*. It must also demonstrate that "prevention services have been offered or provided and have failed to prevent the need for out-of-home placement." *Id*. Prevention services include housing assistance and parenting programs. RCW 13.34.030(20)-(21).

The court must make specified findings about the Department's efforts to prevent out-of-home placement. *In re Dependency of H.*, 71 Wn. App. 524, 529, 859 P.2d 1258 (1993). Simply checking the box on a pre-printed form parroting the statutory language does not meet this requirement. *Id.* Nor is this requirement met where the court's written findings are conclusory and lack any specificity. *Id.* (citing *In re Chubb*, 46 Wn. App. 530, 534-33, 731 P.2d 537 (1986)). An appellate court can look at the oral rulings to determine whether

the findings are sufficiently specific. *Id.* The court's findings regarding the Department's provision of efforts must be supported by substantial evidence. *In re Dependency of W.W.S.*, 14 Wn. App. 2d 342, 362, 469 P.3d 1190 (2020).

Here, the court's written finding merely parrots the statutory language. *Compare* CP 369, *with* RCW 13.34.130(6). The court did not identify the specific services provided. Nor did the court find that prevention services were offered or provided "and have failed to prevent the need for out-of-home placement." RCW 13.34.130(6). This is because the Department did not offer or provide any services. The court's reasonable efforts finding is also undercut by its finding that the Department *did not* provide any housing assistance. CP 369.

The court's written finding is conclusory, broadly adopts the Department's report and testimony, and lacks any specificity. *See H.*, 71 Wn. App. at 529. This fails the statutory requirement, and it is insufficient to allow the Department to place the child out of the home.

Nor does the court's oral ruling satisfy the statutory requirement. Rather, it demonstrates the opposite: the court explicitly recognized the Department's *lack* of efforts. The court discussed Mr. H.'s need for parenting resources and housing because the Department did not offer any. RP 263. The Department did not make any effort, and the court said it "needs to step up." RP 263.

The Department made no effort "to prevent or eliminate" the need to remove C.M. from Mr. H. It also failed to provide any services, nor did it prove that the services "failed to prevent the need for out-of-home placement." RCW 13.34.130(6). Instead of doing anything to keep the family together, it delayed genetic testing, withheld visits, and did not offer any housing assistance or parenting resources. The court's finding that the Department provided reasonable efforts to justify out-of-home placement in the disposition order is not supported by any evidence, and it must be reversed.

3. To carry out the purpose of the Juvenile Court Act, this Court should hold the Department must make reasonable efforts to nurture the family before the court can enter a dependency order.

The United States and Washington Constitutions protect a family's liberty interest, and the Juvenile Court Act require states to preserve the sanctity of the family unit. In order to carry out this mandate, this Court should hold the Department is required to provide reasonable efforts to support the family prior to entry of a dependency order.

In this case, the conditions that served as the basis for the dependency petition could have been resolved prior to fact finding. Yet, the Department did nothing to nurture the family prior to seeking dependency. Instead, the Department did nothing but exacerbate the circumstances it relied on to argue C.M. is dependent.

Reasonable efforts early in the Department's involvement help preserve the family. Early, consistent efforts will have broad impact, particularly on families that are poor, and will help prevent unnecessary further intrusion into the

family. Because the Department failed to provide reasonable efforts to support this family, this Court must reverse.

a. Because the family unit must be nurtured, the Department has an obligation to make reasonable efforts to support the family during shelter care and prior to a dependency finding.

The United States and Washington Constitutions protect a parent's fundamental liberty interest in the custody, care, and companionship of their children. U.S. Const. amend. XIV; Const. art. I, § 3; *In re Dependency of Schermer*, 161 Wn.2d 927, 941, 169 P.3d 452 (2007); *In re Dependency of M.S.R.*, 174 Wn.2d 1, 13, 271 P.3d 234 (2012). Indeed, "[t]he family entity is the core element upon which modern civilization is founded." *In re Custody of Smith*, 137 Wn.2d 1, 15, 969 P.2d 21 (1998).

The Washington Legislature recognizes: "the family unit is a fundamental resource of American life which should be nurtured." RCW 13.34.020. It therefore imposed a responsibility on the State to support the family, stating that, whenever possible, "the family unit should remain intact." *Id*.

Families must remain undisturbed by state intrusion unless there is a compelling reason. *Smith*, 137 Wn.2d at 15. Courts zealously guard families against unwarranted government intervention. *Id*. Even when justified, the intrusion into the family must be "narrowly drawn." *Id.* The State must work to maintain the family, and it may interfere with the sanctity of a family unit only when "a child's right to basic nurture, health, or safety is jeopardized." RCW 13.34.020.

When the Department intrudes in a family's sphere, it has an ongoing obligation to make reasonable efforts to nurture the family. *See* RCW 13.34.020. This requirement begins at the shelter care stage, and the court reviews the case every thirty days. RCW 13.34.065(5)(a); RCW 13.34.065(7)(a)(i). The requirement to support the family unit also applies at the disposition stage following a dependency finding. RCW 13.34.130. This is also required in developing a permanency

plan,[5] at review hearings,[6] and at permanency plan hearings.[7] Inherent in this requirement is the Department to justify the State's continued intrusion. *See* RCW 13.34.138(1) (requiring regular review hearings to "determine whether court supervision should continue").

The purpose of the Juvenile Court Act is to nurture and protect the family unit, and courts must consider the statutory scheme as a whole. RCW 13.34.020; *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). To carry out this purpose, the Department must be required to prove it made reasonable efforts to nurture the family before the court can enter a dependency order. *See* H.B. 1227, Laws of 2021, ch. 211, § 9 (effective July 1, 2023) (the Department's failure to meet its burden during shelter care "will be considered when determining *whether reasonable efforts*

[5] RCW 13.34.136(1)-(2).
[6] RCW 13.34.138(2)(c)(i).
[7] RCW 13.34.145(15).

have been made by the department during a [dependency] hearing under RCW 13.34.110") (emphasis added).

The Department's responsibility to make reasonable efforts to support the family must consistently apply throughout each stage of dependency proceedings. In *K.W.*, the question was what standard governs placement of a child during different stages of dependency proceedings. 199 Wn.2d at 147. While the statute for placement of a *dependent child* expressed a strong preference for relative placement, the statute governing placement of a *legally free child*, where parental rights have been terminated, did not. *Compare* RCW 13.34.130(3), *with* former RCW 13.34.210 (Laws of 2020, ch. 212, § 104).

The Supreme Court in *K.W.* held that, in light of the purpose of the Juvenile Court Act, "the standards governing a child's placement should not change at each stage of a dependency." 199 Wn.2d at 150-51 (citing RCW 13.34.020). Therefore, even though the plain text regarding placement of a legally free child did not require relative placement, the

Supreme Court concluded the preference for relative placement continued to apply.[8] *See id.* at 151 (construing "other suitable measures" in former RCW 13.34.210 (Laws of 2020, ch. 212, § 104) to encompass the standards expressed throughout the statutory scheme).

Under the Supreme Court's reasoning in *K.W.*, and to carry out the purpose of the Juvenile Court Act, the Department must be required to prove it made reasonable efforts before the court can find a child dependent.

In reaching its conclusion, the Supreme Court in *K.W.* also pointed to the statutory requirement that the dependency court regularly review the status of the case "to determine whether court supervision should continue." 199 Wn.2d at 149 (citing RCW 13.34.138(1)). "This is an active process." *Id.*

[8] The legislature has since amended the statute regarding placement of a legally free child to expressly require the same relative placement standard "throughout the life of the case." RCW 13.34.210.

Likewise, the question of whether the Department is making efforts to nurture the family should also be "an active process." The dependency court should regularly review the Department's efforts to justify its continued intrusion into the family. The court should make this inquiry at a dependency fact finding hearing to "actively ensur[e]" the purpose of the Juvenile Court Act is being honored before subjecting the family to further State intrusion. *Id*.

Requiring reasonable efforts before a child can be found dependent nurtures the family unit. When the Department makes reasonable efforts early in its involvement, the family may be able to avoid a dependency altogether. Prioritizing "prevention, early intervention, and family preservation" during early stages will further the important purpose of nurturing the family. The Pew Commission on Children in Foster Care,

Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care at 25 (May 18, 2004)[9] (Pew Report).

Efforts to support the family unit prior to a dependency order are especially important where the main reason for the State's involvement is that the family is poor. *See generally* Deborah Paruch, *The Orphaning of Underprivileged Children: America's Failed Child Welfare Law & Policy*, 8 J. L. & Fam. Stud. 119 (2006) (discussing a Michigan Supreme Court case where the parent's lack of housing and the length of time the children were in State custody served as the basis for termination of her parental rights).

Without "appropriate services geared toward preservation and reunification of families," children of poor families are unnecessarily placed in foster care at high rates. *Id.* at 145-46 (citing generally The Pew Report). "The result is a discouraging

[9] Available at: https://www.pewtrusts.org/-/media/legacy/uploadedfiles/phg/content_level_pages/reports/0012pdf.pdf

and frustrating cycle: Foster care rolls are swelled by children who might have been able to stay at home safely or leave [foster] placement sooner" if their families had access to basic resources such as affordable housing, clothing, food, and medical care. Pew Report at 13.[10]

Early efforts to support the family are particularly impactful where the family is poor and where the conditions giving rise to the alleged parental deficiencies can be resolved prior to entry of a dependency order. *See G.L.L.*, 20 Wn. App. 2d at 433 (holding it is "nonsensical" for the Department to argue lack of housing is a parental deficiency "without ever providing housing services"). This is especially true where, as in this case, the parent identifies the help they need, yet the

[10] This is both "sound family preservation policy, but sound fiscal policy as well." Paruch, *supra*, at 164 (noting the State spent about $1,800 each month the children were in foster care and "[f]or a fraction of that amount, [the mother] could have been provided with housing and child care assistance which would have allowed her family to remain intact").

Department does nothing to help. *See* RP 27, 139 (Mr. H. repeatedly asked the Department for help obtaining housing).

A majority of child welfare cases involve poverty-related issues such as inadequate housing. *Wash. State Coalition for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 921 n.7, 949 P.2d 1291 (1997); Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. Rev. 637, 666-67 (2006). And lack of safe and stable housing has broad impact on other barriers to reunification. *Coalition for the Homeless*, 133 Wn.2d at 921 n.7; Taylor A. F. Wolff, *Housing is Healthcare: The Tax Implications of Homelessness and Addiction*, 21 Quinnipiac Health L.J. 259, 264-65 (2018).

Instead of preemptively seeking a dependency, the Department must support the family unit by making reasonable efforts to resolve the underlying issues that serve as the basis for a dependency. *See In re Dependency of A.L.K.*, 196 Wn.2d 686, 706, 478 P.3d 63 (2020) (Montoya-Lewis, J., concurring) (consistent with RCW 13.34.020, the Department must

"actively engage in assisting a family in finding safe and stable housing to preserve the family unit" prior to dependency, "regardless of whether the family is an Indian family").

The Juvenile Court Act expressly requires "reasonable efforts" at every proceeding where the child is removed from the home. But even where a child is allowed to live at home, the Department must still provide reasonable efforts.

A dependency finding is incredibly invasive and burdensome. Once a child is found dependent, the court can impose numerous requirements on the family that are often invasive, complicated, and demanding. *See A.L.K.*, 196 Wn.2d at 708 (Montoya-Lewis, J., concurring) (evaluations subject a parent to "personal and invasive testing and observation").

A dependency finding puts tremendous stress on the parents, children, and their extended family and exacerbate the conditions that lead to a dependency in the first place. It also means the family is subject to extended court involvement. In recognition of this intrusive burden, even where the child is

placed at home, the court must order services "that least interfere with family autonomy." RCW 13.34.130(1)(a); *see also* RCW 13.34.025(1)(b) (recognizing dependency proceedings subject parents to a high number of "contacts").

Efforts to support the family prior to entry of a dependency order will also help the family avoid termination. As soon as the court enters a dependency order, the clock starts ticking towards termination. *See* RCW 13.34.180(1)(c) (petition for termination can be filed when the child has been removed and dependent for six months); RCW 13.34.145(5) (the Department must petition for termination if the child has been removed and dependent for a certain length of time); RCW 13.34.180(1)(e) (that parental deficiencies have not improved within 12 months of disposition order presumptively supports termination). Particularly for parents who are poor, once their children are found to be dependent, it may feel like they "'got on a train and [they were] never able to get off.'" Paruch, *supra*,

at 121 (quoting *In re Trejo*, 612 N.W.2d 407, 419 (Mich. 2000) (Cavanagh, J., dissenting)).

In light of the clear purpose of the Juvenile Court Act, this Court should hold the Department must provide reasonable efforts to nurture the family unit prior to entry of a dependency order.

> *b. The Department declined visits for several months, failed to provide visits in a manner to support Mr. H., and never provided Mr. H. parenting or housing resources prior to seeking dependency. This fails the Department's duty to provide reasonable efforts to support the family unit.*

The Department alleged Mr. H. was not a capable parent because of his need for housing stability and parenting skills. CP 249. These conditions became apparent to the Department as soon as Mr. H. became involved, yet the Department made no efforts to support the family.

Mr. H.'s status as a new parent was obvious during his first visit with C.M. RP 59. Aside from his status as a new parent, there were no other concerns about his parenting ability. RP 92, 176. The Department agreed he could learn to be a safe

parent and acknowledged parenting resources would help him gain the skills he needed. RP 94, 173, 175. But it did nothing to help Mr. H. access the resources he needed.

The Department also knew Mr. H. was homeless since the first moment he contacted the Department. CP 247. It also knew how his lack of stable housing impacted other areas of his life. RP 31. Aside from emailing him once, the Department did nothing else to help him access stable housing. RP 139. The Department refused to refer him for a housing voucher. RP 161, 153, 28. The Department also never helped Mr. H. access other helpful resources. RP 37, 156. The Department never even met with Mr. H. or spoke with him outside of visits. RP 77, 150. Even though the Department has a duty to support the family unit, Mr. H. was left on his own and forced to find help elsewhere. RP 28-29.

The Department also delayed establishing parentage and prevented Mr. H. and C.M. an opportunity to get to know each other. *See In re Welfare of Hall*, 99 Wn.2d 842, 851, 664 P.2d

1245 (1983) (a few months can feel like "forever" to a young child). The Department waited nearly five months to order a paternity test. CP 180. Even though it offers visits to other parents while awaiting genetic testing, the Department declined to provide Mr. H. any visits during that time and later cited Mr. H.'s lack of parenting skills and lack of bond as a basis for dependency. RP 174.

The Department also failed to provide visits in a manner to support the family. The Department knew it was difficult for Mr. H. to travel to Pierce County, but it still held C.M.'s visits there. RP 71, 50, 55. It also forced him to share visits with Ms. M., depriving him of one-on-one time with his daughter to develop their bond or his parenting skills. RP 55.

Instead of doing anything to support the family unit, the Department filed a petition for dependency. The Department observed the conditions giving rise to Mr. H.'s alleged parental deficiencies and acknowledged the conditions could be easily remedied, but it declined to do anything. The Department had

already physically separated Mr. H. and C.M., and its inaction drove a wedge that only widened the distance between them. The Department failed to make reasonable efforts to support the family unit prior to seeking dependency.

The Department concluded Mr. H. was not capable of parenting before he even had a chance to be a parent. It created the conditions that contributed to his alleged parental deficiencies by withholding support, then relied on those conditions to argue C.M. is dependent. *See Matter of C.M.*, 432 P.3d 763, 766 (Okla. 2018) (the State agency, "who is entrusted with the duty to help salvage the family relationship," cannot "contribute[] to the fact situation" justifying State intervention).

The Department failed the legislative directive to nurture and support the family. Had the Department made reasonable efforts to nurture the family by providing Mr. H. with parenting support and housing resources, the family could have been reunited and the dependency been avoided, or the court could have ordered an at-home dependency. *See* RP 259 (Mr. H.

arguing to leave the case in shelter care to allow the family an opportunity to access resources and avoid a dependency). The dependency order must be reversed.

F. CONCLUSION

A dependency order must be supported by substantial evidence. In addition, this Court should hold the Department is required to provide reasonable efforts prior to entry of a dependency order. Because the dependency order is not supported by any evidence and the Department made no efforts to support the family, this Court should reverse and dismiss the dependency order.

Even if dependency is warranted, the Department failed to provide reasonable efforts to justify out-of-home placement. This Court should reverse and remand for C.M. to be placed with her father.

I certify this brief contains 7,352 words and complies with RAP 18.17.

Respectfully submitted this 4th day of August 2022.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

IN RE C.M., A MINOR CHILD.	)	NO. 56970-1-II

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